

87-35 ①

Supreme Court, U.S.

FILED

JUL 2 1987

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CLERK

No. _____

IN THE
Supreme Court of the United States
OCTOBER TERM, 1986

ALLAN E. PALMER,

Petitioner,

v.

THE CITY OF SEATTLE,

Respondent.

**PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF WASHINGTON**

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QUESTION PRESENTED

Did counsel stipulate properly?

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OPINION BELOW

The Washington State Supreme Court rendered its decision on June 11, 1987 in an opinion reported at 53734-8. A copy of that opinion is attached as petitioner's Appendix B. Petitioner sought review of an Order Dismissing Personal Restraint Petition by the Washington State Court of Appeals on March 23, 1987. Appendix C.

JURISDICTION

Jurisdiction of this Court involved pursuant to 28 U.S.C. 1257. -

STATEMENT OF THE CASE

On October 20, 1981, petitioner Allan E. Palmer was charged with Discharging a Firearm and Harrassment alleged to have occurred on August 25, 1981 contrary to Seattle Municipal Code 12A.28.050 (Appendix A) and 12A.060.040, respectfully. On November 18, 1981 petitioner appeared with counsel for trial in Seattle Municipal Court.

At trial, all charges against petitioner were dismissed by defense counsel's stipulation that the police report contained facts sufficient to support the charge of Discharging a Firearm. Upon review of the police report the judge found petitioner guilty. The trial court then ordered a pre-sentence report and set a sentencing date for December 16, 1981.

On December 16, 1981, the trial court sentenced petitioner to serve 15 days in City Jail and imposed a \$250 fine, all 15 days and \$125 were suspended upon petitioner's compliance with several conditions. The conditions of the suspended sentence were:

- 1) petitioner attend mental health counseling;
- 2) petitioner have no contact with certain named persons in the neighborhood;
- 3) petitioner use no bullhorns or flashlights in the neighborhood; and
- 4) petitioner have no criminal offenses.

SUMMARY OF FACTS

On October 20, 1981, the City of Seattle brought criminal charges against defendant Allan E. Palmer for (1) discharging a firearm or explosive on August 25, 1981, violating Seattle Municipal Code 12A.28.050 (Appendix

A); (2) harassment; (3) discharging a firearm or explosive on August 4, 1981; (4) reckless endangerment; and (5) menancing. Defendant was brought to trial on November 18, 1981 and on condition that defendant submit his case to the judge on the police report all charges were dismissed except one count of discharging a firearm or explosive on August 25, 1981. To that charge, a not guilty plea was entered and the case was submitted to the Honorable Judge John M. Darrah on the police record. The Judge found defendant guilty.

Trials on the record are routinely done in Seattle Municipal Court. A trial on the record is an agreement by counsel that the determination of facts may be made by the Judge based completely upon the police record. No live testimony is permitted and no defense witnesses are called. The Judge determines guilt or innocence based solely upon the facts as they appear in the police report.

ARGUMENT

1.

COUNSEL MADE A MISTAKE

In *Baird v. Baird*, 6 Wn. App. 587, 494 P.2d 1387 (1972) the Washington State Court of Appeals held:

Only if by fraud, mistake, misunderstanding or lack of jurisdiction is shown will a judgment by consent be reviewed on appeal.

With respect to stipulation, function or trial court is to ascertain that parties and counsel understand it and to implement it.

It is particularly illuminating to consider the conversation in court at the time of submittal.

Prosecutor: We—this motion (motion to dismiss other charges) is based on our anticipation of the defense plea will be on the record.

Judge Darrah: What is the anticipated plea of the charge of discharging a firearm on August 25?

Counsel: The anticipated plea your honor will be "not guilty."

Counsel: We are anticipating a submittal on the facts; that the facts as presented present facts sufficient to establish the charge.

Judge Darrah: O.K. Is the police report in this case the record that's—are you agreeable to having that police report be the record for the purposes of determining the facts?

Counsel: Yes your honor.

Judge Darrah: Is there a stipulation that the police report in fact contains facts sufficient to support the charge of discharging a firearm on that date?

Counsel: Yes your honor.

Judge Darrah: May I see the police report please?

Prosecutor: Yes, if I may approach the bench your honor.

Clerk: Are you going to dismiss the charges of the offense?

Judge Darrah: Yes, so long as I am satisfied with the report (reads report) O.K. on that basis I do indicate that I do find here proof beyond a reasonable doubt of the offense of discharging a firearm and I—what I will do is dismiss the remaining charges.

However, Judge Darrah at the time of sentencing indicated there was some problem with the police report when new counsel indicated the report was lacking. Judge Darrah stated:

Judge Darrah: ". . . uh, and uh, it was uh it was while in fact as you note counsel the record itself in term of the police report did not provide facts necessary in order to make a finding the stipulation bridged that gap."

In *Baird v. Biard, supra*, the Washington State Court of Appeals reached its findings of fact and conclusions of law for a stipulation by citing cases where either the trial judge or counsel interviewed the party seeking relief from the stipulation in open court.

In *Maxwell v. Dow*, 176 U.S. 581 (1900) this Court held: ". . . So long as all within the jurisdiction of the State are made liable against by the same kind of procedure to have the same kind of trial and equal protection of the laws is secured to them."

CONCLUSION

For the above reasons petitioner prays that a Writ be granted.

Respectfully submitted,

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APPENDIX A

STATUTE INVOLVED

Seattle Municipal Code 12A.28.050. Discharging a Firearm or Explosive.

Exceptions

It is unlawful to discharge any cannon, gun, pistol, revolver, or other firearm, or to fire or explode or other thing containing powder, or other explosive material, except on days of public celebration or jubilation, and then only as permitted by law. This section shall not apply to the following: licensed shooting galleries, airplane ordinance testing and proving grounds, used in the manufacture of aircraft; rifle or pistol practice range located, established, used and/or patrolled by the armed forces of the United States, by the State of Washington, or by the police department; the discharge of any firearm in the performance of official duties or in the course of employment or in civilian sports by any person having a permit or the lawful right to carry such firearm; or to the lawful use of explosives for blasting or construction or demolition work.

APPENDIX B

THE SUPREME COURT OF WASHINGTON
NO. 53734 - 8

In The Matter of the Personal
Restraint Petition of

ALLAN E. PALMER

Petitioner.

Filed Jun 11 1987

RULING DENYING MOTION FOR DISCRETIONARY REVIEW

Allan Palmer has filed numerous successive personal restraint petitions challenging his 1981 Seattle Municipal Court conviction for unlawfully discharging a firearm. The present petition makes arguments that were made and rejected in at least two of his previous petitions. The Acting Chief Judge of Division One of the Court of Appeals therefore dismissed this petition pursuant to *In re Haverty*, 101 Wn.2d 498, 681 P.2d 835 (1984). See also RAP 16.4(d). Mr. Palmer now seeks this court's review. The City of Seattle move for imposition of monetary sanctions against him pursuant to RAP 18.9.

The Acting Chief Judge is clearly correct in concluding that Mr. Palmer may not continue to litigate issues that were decided against him in previous personal restraint petitions; he has not shown that the ends of justice require such relitigation. *In re Haverty*, *supra*; see also *In re Taylor*, 105 Wn.2d 683, 717 P.2d 755 (1986). Moreover, as the City observes, Mr. Palmer has not explained how he could still be under any "restraint" from a 1981 misdemeanor conviction. See RAP 16.4(b). Since the petition was thus properly dismissed, the motion for discretionary review must be denied. See RAP 13.5.

Though the petition was frivolous, I am not persuaded that the City should be awarded terms. RAP 18.9(a) permits an award of "terms or compensatory damages to any . . . party who has been harmed" by another party's violation of the court rules. Since the City was not required to respond either to Mr. Palmer's personal restraint petition or to his present motion, it was not "harmed" by his actions. Also, I note that the Acting Chief Judge has directed the Court of Appeals' clerk to return any subsequent personal restraint petitions Mr. Palmer might file seeking similar relief unless he makes the requisite showing of good cause. This directive should adequately address the City's concerns.

The motion for discretionary review and the motion for sanctions are both denied.

DATED at Olympia, Washington this 11th day of June, 1987.

/s/Geoffrey Crooks
COMMISSIONER

APPENDIX C

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
Division I

No. 19750-9-I

In The Matter of the Personal
Restraint Petition of:

ALLAN E. PALMER

Petitioner.

Filed Mar. 23, 1987

ORDER DISMISSING PERSONAL RESTRAINT PETITION

Petitioner Allan E. Palmer has filed a personal restraint petition in which he seeks relief from the judgment and sentence entered in the Seattle Municipal Court following his conviction for discharging a firearm or explosive. He alleges the trial court erroneously relied upon the stipulated evidence contained in the police reports in finding him guilty of the crime. However, petitioner basically raised the same issue before this court in prior personal restraint petitions in Cause Nos. 17505-O-I, 14285-2-I and 13300-4-I. He is barred from raising the issue again on collateral review. *In re Haverty*, 101 Wn.2d 498, 502-03, 681 P.2d 835 (1984); *State v. Stockman*, 70 Wn.2d 941, 947, 425 P.2d 898 (1970); see also *In re Taylor*, 105 Wn.2d 683, 687-88, 717 P.2d 755 (1986). Now, therefore, it is hereby

ORDERED that the personal restraint petition is dismissed and in the event petitioner files another petition for similar relief without establishing good cause, the clerk of this court shall return the petition without filing. *In re LaLande*, 30 Wn. App. 402, 406, 634 P.2d 895 (1981). It is further

5a

ORDERED that the City of Seattle's request for costs under RAP 18.9 is denied.

Done this 23rd day of March, 1987.

/s/Coleman, J.
Acting Chief Judge

APPENDIX D**THE SUPREME COURT OF WASHINGTON
NO. 49896-2**

In The Matter of the Personal
Restraint Petition of

ALLAN E. PALMER

Petitioner.

Filed Oct. 28th 1983

**RULING DENYING MOTION FOR
DISCRETIONARY REVIEW**

Allan Palmer moves for discretionary review of an order of the Acting Chief Judge of Division One of the Court of Appeals dismissing his personal restraint petition. In that petition he sought to challenge a 1981 Seattle Municipal Court conviction for discharging a firearm. The Acting Chief Judge essentially found that Mr. Palmer had not made a *prima facie* showing that constitutional error had occurred during his trial which resulted in his actual and substantial prejudice.

In response to the motion for discretionary review, the City of Seattle urges that this case does not meet the review standards of RAP 13.4(b). The standards for further review of a decision on a personal restraint petition, however, are those set forth in RAP 13.5(b). See RAP 16.14(c). Nonetheless, I cannot find that review is warranted under the applicable standards.

Mr. Palmer's principal claim appears to be that his trial counsel was ineffective, because he failed to present certain evidence to the trial court. The case was submitted to the trial court on stipulated facts, however, as part of an agreement (akin to a plea bargain) in which the prosecution dismissed at least one other charge against Mr. Palmer. There is no indica-

tion that Mr. Palmer was not cognizant of the manner in which the case was thus being presented, that he did not participate in the decision to enter into the agreement with the prosecution, or that his counsel did not represent him well and faithfully in assisting in this disposition of the criminal charges. Thus, as the Acting Chief Judge found, Mr. Palmer has shown no constitutional error which resulted in his actual and substantial prejudice.

In short, Mr. Palmer has failed to demonstrate that the Acting Chief Judge committed obvious or probable error in dismissing his personal restraint petition. The standards of RAP 13.5(b) are therefore not satisfied, and the motion for discretionary review must be denied.

DATED at Olympia, Washington, this 28th day of October, 1983.

/s/Geoffrey Crooks
COMMISSIONER

